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Counsel for Movants Westchester Capital Management, Inc. and Green & Smith Investment Management L.L.C.

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HCL PARTNERS LIMITED PARTNERSHIP, On behalf of Itself and all others similarly situated,

Plaintiff,

-v-

LEAP WIRELESS INTERNATIONAL, INC., S. DOUGLAS HUTCHESON, DEAN M. LUVISA, AMIN I. KHALIFA and PRICEWATERHOUSECOOPERS, LLP,

Defendants.

Case No.: 07-cv-2245-BTM-NLS

CLASS ACTION

CERTIFICATION OF KARIN E. FISCH IN SUPPORT OF MOTION TO RECONSIDER

DATE: August 15, 2008
TIME: 11:00 a.m.
JUDGE: Hon. Barry Ted Moskowitz
CTRM: 15 (5th Floor)

FRANK CHAREK, Individually and on behalf of all others similarly situated,

Plaintiff,

-v-

LEAP WIRELESS INTERNATIONAL, INC., S. DOUGLAS HUTCHESON, MARK H. RACHESKY, AMIN I. KHALIFA, GLENN UMETSU, and DEAN M. LUVISA,

Defendants.

Case No.: 07-cv-2256-BTM-NLS

[Caption continued on next page]

DEVAY CAMPBELL, Individually and on behalf of all others similarly situated, Plaintiff, -v- LEAP WIRELESS INTERNATIONAL, INC., S. DOUGLAS HUTCHESON, MARK H. RACHESKY, AMIN I. KHALIFA, GLENN UMETSU, and DEAN M. LUVISA, Defendants.	Case No.: 07-cv-2297-BTM-NLS

I, Karin E. Fisch, certify under penalty of perjury that the foregoing is true and correct:

1. I am a partner at the law firm of Abbey Spanier Rodd & Abrams, LLP, counsel for Westchester Capital Management, Inc. and Green & Smith Investment Management L.L.C. (together, "Westchester Capital"). I submit this certification pursuant to Local Rule 7.1(i)(1), together with the exhibits annexed hereto, in support of Westchester Capital's Motion for Reconsideration of this Court's May 22, 2008 Order Granting Motions to Consolidate, Appointing New Jersey Carpenters Pension and Benefit Fund as Lead Plaintiff, and Approving Lead Counsel Selection (the "Lead Plaintiff Order").

2. On January 28, 2008, Westchester Capital filed its Notice of Motion and Motion by Class Members Westchester Capital Management, Inc. and Green & Smith Investment Management L.L.C. for the Consolidation of All Related Actions, for Appointment as Lead Plaintiff and for Approval of Lead Plaintiff's Selection of Lead Counsel. A competing motion was filed by the New Jersey Carpenter Pension and Benefit Funds (the "Carpenter Funds").

3. After the competing motions were fully briefed, but without hearing oral argument, the Court granted the motions to consolidate and appointed the Carpenter Funds as the Lead Plaintiff in the litigation. The Court also approved the Carpenter Funds' selection of Lead Counsel.

4. In appointing the Carpenter Funds as the Lead Plaintiff, the Court found that Westchester Capital had not established that it had "authority to sue on behalf of the funds." Order at 5 (Ex. A, hereto). The Court disagreed with the courts that have held that if an investment advisor has unrestricted decision-making authority in connection with its clients' accounts, then it has standing to sue in its own right. *Id.* The Court further found that certain language in the Certification of Roy Behren, the Chief Compliance Officer of Westchester Capital and the underlying funds, cast doubt on whether there had been a "specific grant of authority to sue on behalf of the funds." *Id.* at 7. The Court did not cite to any evidence submitted by the Carpenter Funds refuting Mr. Behren's statement, issued as Chief Compliance Officer, that Westchester Capital had authority to commence litigation on its own behalf and on behalf of the underlying funds. The Court also expressed concern with the fact that certain of the underlying funds were

foreign entities. *Id.*

5. The decision of the Court was relayed to Westchester Capital. Mr. Behren, surprised that his statement as Chief Compliance Officer of the funds that he was attorney-in-fact authorized to take all acts of behalf of the funds had been questioned, conveyed the substance of the decision to the trustees of the underlying funds. The Trustees of the funds promptly executed Consents confirming their longstanding belief that each adviser had and has had "standing and authority under the Advisory Agreements to commence and pursue lawsuits on behalf of the funds." (Exhibits B and C, attached hereto).

6. In light of the Court's concern regarding foreign entities acting as Lead Plaintiff, attached hereto (Ex. D) is a damage chart that was run by counsel on January 11, 2008 showing that over 88% of the losses suffered by the funds advised by Westchester Capital were suffered in the Merger Fund, a Massachusetts business trust. The losses of the Merger Fund alone dwarf the losses suffered by the Carpenter Funds. Also attached hereto, as Exhibit B, is the Consent Action of the Board of Trustees of the Merger Fund and The Merger Find VL, the two domestic funds, confirming the authority of Westchester Capital to pursuit this specific lawsuit on their behalves.

7. For ease of reference, the Certification of Lead Plaintiff Pursuant to Federal Securities Laws signed by Roy Behren is attached hereto as Exhibit E and the subsequent Declaration of Roy Behren is attached hereto as Exhibit F.

I hereby declare under penalty of perjury under the laws of the United States, that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed this 23rd day of June, 2008 at New York, New York.

KARIN E. FISCH

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HCL PARTNERS LIMITED PARTNERSHIP, on behalf of itself and all others similarly situated, Plaintiff, v. LEAP WIRELESS INTERNATIONAL, INC., S. DOUGLAS HUTCHESON, DEAN M. LUVISA, AMIN I. KHALIFA and PRICE WATERHOUSECOOPERS, LLP, Defendants.	CASE NO. 07cv2245 BTM(NLS) **ORDER GRANTING MOTIONS TO CONSOLIDATE, APPOINTING NEW JERSEY CARPENTERS PENSION AND BENEFIT FUND AS LEAD PLAINTIFF, AND APPROVING LEAD COUNSEL SELECTION**
KENT CARMICHAEL, Individually and on behalf of all others similarly situated, Plaintiff, v. LEAP WIRELESS INTERNATIONAL, INC., S. DOUGLAS HUTCHESON, MARK H. RACHESKY, AMIN I. KHALIFA and DEAN M. LUVISA, Defendants.	CASE NO. 08cv0128 BTM(NLS)

Westchester Capital Management, Inc. ("Westchester") and Green & Smith Investment Management LLC ("G&S") have filed a motion to consolidate the above-captioned actions, to be appointed as lead plaintiff, and to approve their selected counsel as lead counsel. The New Jersey Carpenters Pension and Benefit Funds ("Carpenter Funds") have also filed a motion to consolidate the actions, to be appointed as lead plaintiff, and to approve their selected counsel as lead counsel.[1] For the reasons discussed below, the motions to consolidate are **GRANTED**. Westchester and G&S's motion for appointment as lead plaintiff and for approval of their attorneys as lead counsel is **DENIED**. The Carpenter Funds' motion for appointment as lead plaintiff and for approval of their attorneys as lead counsel is **GRANTED**.

I. BACKGROUND

These class actions are brought on behalf of persons who purchased or otherwise acquired securities of Leap Wireless International, Inc. ("Leap" or "Company"), during the time period between May 16, 2004 and November 9, 2007.[2] All of the actions allege that Leap and individual officers of the Company made material misrepresentations and omissions of fact regarding the Company's revenues beginning in fiscal year 2004 and continuing through the second quarter of fiscal year 2007. (The HCL Partners case also names as a defendant PricewaterhouseCoopers, LLP, which allegedly represented that Leap's financial statements were in conformity with accounting principles generally accepted in the United States of America.)

On November 9, 2007, Leap announced that it was restating its financial results going back to fiscal year 2004 to correct for errors in previously reported service revenues, equipment revenues, and operating expenses. According to Leap's press release, the most significant adjustment related to the Company's prior accounting for a group of customers who voluntarily disconnected service. After the November 9, 2007 announcement, the price of the Company's publicly traded stock plummeted to close at $36.72 per share, declining 37% from the previous trading day's close of $58.10.

---

[1] Motions for appointment as lead plaintiff and for approval of lead counsel were also filed by Louisiana Municipal Police Employees' Retirement System and by Alaska Electrical Pension Fund jointly with Genesee County Employees' Retirement System. These motions were subsequently withdrawn. The related action Charek v. Leap Wireless, et. al., Case No. 07cv2256, was voluntarily dismissed on January 30, 2008. Campbell v. Leap Wireless, et al. was also voluntarily dismissed on May 7, 2008.

[2] The class period in HCL Partners Limited Partnership v.Leap Wireless, Case No. 07cv2245 BTM(NLS), is from May 16, 2004 to November 9, 2007, and is the longest class period of the three actions.

The actions allege that Defendants' material misrepresentations and omissions caused the Company's securities to be overvalued and artificially inflated, causing damages to Plaintiffs and other members of the class. The actions assert claims for violation of section 10(b) of the Exchange Act and Rule 10b-5 and violation of section 20(a) of the Exchange Act.

II. DISCUSSION

A. Consolidation

Consolidation may be appropriate when actions before the court involve a "common question of law or fact." Fed. R. Civ. P. 42(a). All of these actions cover approximately the same time period, arise out of the same facts, and allege violations of the securities laws. Defendants agree that the cases should be consolidated. Therefore, the Court grants the motions for consolidation.

B. Lead Plaintiff & Lead Counsel

Competing motions to be appointed lead plaintiff and to approve selected counsel as lead counsel have been filed by (1) Westchester and G&S, and (2) Carpenter Funds. As discussed below, the Court finds that Carpenter Funds is most capable of adequately representing the interests of class members.

1. Governing Law

Under the Private Securities Litigation Reform Act ("PSLRA"), no later than 20 days after filing a class action securities complaint, a private plaintiff or plaintiffs must publish a notice advising members of the purported plaintiff class of the pendency of the action, the

Case 3:07-cv-02245-BTM-NLS Document 38 Filed 05/22/2008 Page 4 of 9

claims asserted, and that any member of the purported class may move the court to serve as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(A)(i). Not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class. Id.

Within 90 days after publication of the notice, the Court shall consider any motion made by a class member to serve as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(i). The Court shall appoint as lead plaintiff "the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members." Id.

The presumptively most adequate plaintiff is the one who "has the largest financial interest in the relief sought by the class" and "otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). "In other words, the district court must compare the financial stakes of the various plaintiffs and determine which one has the most to gain from the lawsuit. It must then focus its attention on *that* plaintiff and determine, based on the information he has provided in his pleadings and declarations, whether he satisfies the requirements of Rule 23(a), in particular those of 'typicality' and 'adequacy.'" In re Cavanaugh, 306 F.3d 726, 730 (9th Cir. 2002).

The presumption of adequacy may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff will not fairly and adequately protect the interests of the class or is subject to unique defenses that render such plaintiff incapable of adequately representing the class. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). If the district court determines that the presumptive lead plaintiff does not meet the typicality or adequacy requirement, the Court must then proceed to determine whether the plaintiff with the next lower stake in the litigation has made a prima facie showing of typicality and adequacy. Cavanaugh, 306 F.3d at 731. If so, that plaintiff becomes the presumptive lead plaintiff and other plaintiffs must be given the opportunity to rebut that showing. Id.

A straightforward application of the statutory scheme "provides no occasion for comparing plaintiffs with each other on any basis other than their financial stake in the case."

Cavanaugh, 306 F.3d at 732. Once the Court identifies the plaintiff with the largest stake in the litigation, "further inquiry must focus on that plaintiff alone and be limited to determining whether he satisfies the other statutory requirements." Id.

2. Lead Plaintiff Analysis

a. Notice and Publication

On November 27, 2007, a notice regarding the HCL Partners lawsuit was published on Market Wire. Both sets of movants filed their motions within 60 days. Therefore, the motions are timely.[3]

b. Financial Interest

Westchester is the investment advisor to The Merger Fund and The Merger Fund VL. (Cert. of Lead Plaintiff (Ex. B to Kaboolian Decl.) ¶ 1.) G&S is the investment advisor to the GS Master Trust, MSS Merger Arbitrage 2, and Institutional Benchmark Series (Master Feeder) Limited. (Id.) Westchester and G&S are somehow "related," and Roy Behren is the Chief Compliance Officer for both entities. (Cert. of Lead Plaintiff ¶ 2.) In claiming that they have suffered the greatest financial loss, Westchester and G&S seek to consolidate the losses suffered by the separate funds.

Carpenter Funds argues, among other things, that Westchester and G&S have not established that they have authority to sue on behalf of the funds and therefore are not qualified as lead plaintiff. The Court agrees with Carpenter Funds.

The courts are not in agreement when or if investment advisors may serve as Lead Plaintiff based on the financial losses of their clients. Of the courts that permit investment advisors to serve as lead plaintiff, many require that the investment advisor establish that it has specifically been authorized to bring suit on behalf of its clients. In Weisz v. Calpine Corp., 2002 WL 32818827 (N.D. Cal. Aug. 19, 2002), the court explained that although it appeared that the investment manager had discretionary authority with respect to its clients' accounts, there was no evidence that the investment manager had been authorized by its clients to bring securities law claims on their behalf. Accordingly, the Court found that the investment manager had not demonstrated itself to be an adequate plaintiff within the meaning of the PSLRA. See also In re Peregrine Systems, Inc. Sec. Litig., 2002 WL 3276939 (S.D. Cal. Oct. 11, 2002) (pointing out that although the investment company stated that it had complete investment authority and was the attorney-in-fact with full power and authority to act in connection with its investments, the investment company did not state that it had authority to institute suit and litigate on behalf of its clients); Smith v. Suprema Specialties, Inc., 206 F. Supp. 2d 627, 635 (D.N.J. 2002) ("The clients' mere grant of authority to an investment manager to invest on its behalf does not confer authority to initiate suit on its behalf. StoneRidge Investment has not provided the Court [with] any indication that its members have given it authority to file lawsuits on its behalf."); In re eSpeed, Inc. Sec. Litig., 232 F.R.D. 95 (S.D.N.Y. 2005) (explaining that in order for an investment advisor to attain standing on behalf of the investors the advisor must be granted both unrestricted decision-making authority *and* the specific right to recover on behalf of his clients).

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[3] The Court need not reach Carpenter Funds' argument that Westchester and G&S cannot supplement their initial filing with a revised chart recalculating their financial loss. Whether the Court calculates Westchester and G&S's financial losses based on their moving papers or their supplemental filings, the result of this motion is the same.

The Court recognizes that some district courts have held that if an investment advisor has unrestricted decision-making authority in connection with its clients' accounts, it is a "purchaser" and has standing to sue in its own right, regardless of whether its clients formally granted it the authority to sue on their behalf. See In re Rent-Way Sec. Litig., 218 F.R.D. 101 (W.D. Pa. 2003); In re Sonus Networks, Inc. Sec. Litig., 247 F.R.D. 244 (D. Mass. 2007). Although an investment advisor may have standing to sue on its own behalf in certain circumstances, the Court agrees with the courts that hold that to the extent an investment advisor seeks to claim losses suffered by its clients in a bid to qualify as lead plaintiff, the investment advisor must show that its clients specifically authorized it to bring securities law claims on their behalf.

Westchester and G&S have not shown that their clients delegated the authority to sue for losses sustained by the funds. In the Certification of Lead Plaintiff, Behren states:

> Westchester Capital is the Adviser to and has full discretion and controls all investments made by The Merger Fund and The Merger Fund VL. G&S is the adviser to and has full discretion and controls all investments made by the GS Master Trust, MSS Merger Arbitrage 2, and Institutional Benchmarks Series (Master Feeder) Limited.

(Ex. B to Kaboolian Decl.) Notably, Behren does not state that the funds authorized Westchester and G&S to sue on their behalf.

In a subsequently filed declaration, Behren reiterates that Westchester and G&S "have unrestricted decision-making authority with respect to the funds that they advise and manage." (Behren Decl. ¶ 2.) Behren further states:

> *It is my understanding* that if an investment adviser has full discretion and control, as the Westchester Movants do on behalf of these funds, and is the attorney-in-fact authorized to undertake all acts, as the Westchester Movants are on behalf of these funds, then that investment Adviser has standing to commence legal action on its own behalf, including seeking to be appointed as the lead plaintiff in this action.

(Behren Decl. ¶ 4) (emphasis added). It is clear from this statement that there has been no specific grant of authority to sue on behalf of the funds.

Although Behren states that he is "authorized to undertake all acts" on the behalf of Westchester and G&S (Behren Decl. ¶ 3), he does not state that he has been authorized to undertake all acts on behalf of the funds.

Accordingly, Westchester and G&S do not qualify as lead plaintiff. The presumptively most adequate plaintiff is Carpenter Funds, which expended approximately $907,701.16 to purchase 13,800 shares of Leap during the Class Period.

The Court notes that even if Westchester and G&S had authority to sue on behalf of the funds, the Court would have concerns regarding their ability to adequately represent the class. As investment advisors, Westchester & G&S may be subject to unique defenses. Complicating matters further, the funds are foreign entities based in the Carribean. However, because Westchester and G&S are not the presumptively most adequate plaintiff, the Court need not determine whether the presumption of adequacy has been rebutted.

c. Typicality and Adequacy

No member of the purported plaintiff class has rebutted the presumption of Carpenter Funds' adequacy as lead plaintiff by offering proof that Carpenter Funds will not fairly and adequately protect the interests of the class, or is subject to unique defenses that render it incapable of adequately representing the class. Based upon the record before it, the Court is satisfied that Carpenter Funds' claims are typical and that Carpenter Funds is capable of adequately representing the class. Therefore, the Court appoints Carpenter Funds as lead plaintiff.

3. Lead Counsel Analysis

Under the PSLRA, once the court has designated a lead plaintiff, that plaintiff "shall subject to the approval of the court, select and retain counsel to represent the class." 15 U.S.C. § 78u-4(a)(3)(B)(v).

Carpenter Funds ask the Court to approve their selection of Schoengold Sporn Laitman & Lometti, P.C., as lead counsel and Glancy Binkow & Goldberg LLP to serve as local "liaison counsel." It appears that these firms have the appropriate expertise to fulfill their roles as lead counsel and liaison counsel.

Accordingly, the Court approves Schoengold Sporn Laitman & Lometti, P.C., as lead counsel and Glancy Binkow & Goldberg LLP as local liaison counsel.

III. CONCLUSION

For the reasons discussed above, the motions to consolidate are **GRANTED**. Case Nos. 07cv2245 and 08cv128 are hereby **CONSOLIDATED** for all pretrial proceedings. The caption page on all future filings shall contain all of the captions. All future docketing will be done in Case No. 07cv2245, which shall be the main file.

The Court **GRANTS** Carpenter Funds' motion to be appointed lead plaintiff. The Court also **GRANTS** Carpenter Funds' motion for approval of lead counsel. The Court approves Schoengold Sporn Laitman & Lometti, P.C., as lead counsel and Glancy Binkow

& Goldberg LLP as local liaison counsel. The Court **DENIES** Westchester and G&S's motion for appointment of lead plaintiff and approval of lead counsel.

IT IS SO ORDERED.

DATED: May 22, 2008

Barry Ted Moskowitz

Honorable Barry Ted Moskowitz
United States District Judge

EXHIBIT B

THE MERGER FUND
THE MERGER FUND VL

CONSENT ACTION
OF THE
BOARD OF TRUSTEES

The undersigned, being all of the members of the Board of Trustees (the "Board") of The Merger Fund, a Massachusetts business trust ("TMF") and The Merger Fund VL, a Delaware statutory trust ("VL") (together, the "Funds"), in accordance with the laws of the Commonwealth of Massachusetts and Article IV, Section 1 of the By-laws of TMF, and the laws of the State of Delaware and Article III, Section 11 of the By-laws of VL, respectively, do hereby give their written consent without a meeting to the adoption of the following resolutions, which shall have the same force and effect as if presented and adopted at a meeting of the Board:

WHEREAS, the Board believes it is in the best interests of the Funds and their shareholders from time to time to pursue certain lawsuits, including class-action claims, alleging violations of securities laws with respect to securities in which TMF and/or VL has an interest ("Lawsuits");

WHEREAS, the Board believes that Westchester Capital Management, Inc. (the "Adviser") has discretion and authority under each of (i) the Investment Advisory Contract, dated January 31, 1989, by and between TMF and the Adviser and (ii) the Investment Advisory Agreement, dated as of July 1, 2003, by and between VL and the Adviser, respectively (the "Advisory Agreements"), to commence Lawsuits on behalf of the Funds and/or participate as lead plaintiff or otherwise in Lawsuits for the benefit of the Funds;

WHEREAS, the Board is aware that the Adviser, on behalf of the Funds, has (i) commenced Lawsuits or (ii) sought to be appointed lead plaintiff for a class of investors, including the Funds, in Lawsuits; and

WHEREAS, the Board desires to confirm its longstanding belief that the Adviser has standing and authority under the Advisory Agreements to commence and pursue Lawsuits on behalf of the Funds;

NOW THEREFORE, IT IS:

RESOLVED, that the Board hereby confirms its delegation of authority to the Adviser to commence and pursue Lawsuits on behalf of the Funds and/or participate as lead plaintiff or otherwise in Lawsuits for the benefit of the Funds, provided that the Adviser obtains the pre-approval of the Board in the event the Adviser proposes that the Funds make a litigation expenditure in an amount that impacts the Funds' net asset value by an amount greater than $0.01 per share with respect to each Lawsuit;

FURTHER RESOLVED, that each officer of the Adviser and/or the Funds is hereby authorized to take any actions he or she deems necessary or appropriate in connection with Lawsuits; and

FURTHER RESOLVED, that all previous actions taken by the officers of the Adviser and/or the Funds with respect to the Lawsuits are hereby ratified and confirmed in all respects and each officer of the Adviser and/or the Funds is hereby authorized to take such further actions as he or she deems necessary or appropriate in connection with Lawsuits and to effectuate the purposes of these resolutions.

This Consent may be executed in counterparts with all counterparts together constituting one document.

IN WITNESS WHEREOF, the undersigned have executed this Consent as of the 28th day of May, 2008.

Frederick W. Green

James P. Logan, III

Michael J. Downey

Barry Hamerling

FURTHER RESOLVED, that all previous actions taken by the officers of the Adviser and/or the Funds with respect to the Lawsuits are hereby ratified and confirmed in all respects and each officer of the Adviser and/or the Funds is hereby authorized to take such further actions as he or she deems necessary or appropriate in connection with Lawsuits and to effectuate the purposes of these resolutions.

This Consent may be executed in counterparts with all counterparts together constituting one document.

IN WITNESS WHEREOF, the undersigned have executed this Consent as of the 28th day of May, 2008.

Frederick W. Green

James P. Logan, III

Michael J. Downey

Barry Hamerling

FURTHER RESOLVED, that all previous actions taken by the officers of the Adviser and/or the Funds with respect to the Lawsuits are hereby ratified and confirmed in all respects and each officer of the Adviser and/or the Funds is hereby authorized to take such further actions as he or she deems necessary or appropriate in connection with Lawsuits and to effectuate the purposes of these resolutions.

This Consent may be executed in counterparts with all counterparts together constituting one document.

IN WITNESS WHEREOF, the undersigned have executed this Consent as of the 28th day of May, 2008.

Frederick W. Green

James P. Logan, III

Michael J. Downey

Barry Hamerling

FURTHER RESOLVED, that all previous actions taken by the officers of the Adviser and/or the Funds with respect to the Lawsuits are hereby ratified and confirmed in all respects and each officer of the Adviser and/or the Funds is hereby authorized to take such further actions as he or she deems necessary or appropriate in connection with Lawsuits and to effectuate the purposes of these resolutions.

This Consent may be executed in counterparts with all counterparts together constituting one document.

IN WITNESS WHEREOF, the undersigned have executed this Consent as of the 28th day of May, 2008.

Frederick W. Green

James P. Logan, III

Michael J. Downey

Barry Handerling

EXHIBIT C

GS MASTER TRUST

**CONSENT ACTION
OF THE
TRUSTEE**

The undersigned, being the sole trustee (the "**Trustee**") of GS Master Trust, a Bermuda trust (the "**Trust**"), does hereby give its written consent to the adoption of the following resolutions:

WHEREAS, the Trustee believes it is in the best interests of the Trust and its beneficiaries to pursue that certain class-action lawsuit captioned *HCL Partners Limited Partnership v. LEAP Wireless International, Inc., et al., Case No: 07-cv-2245BTM (NLS),* pending in the United States District Court for the Southern District of California (the "**Lawsuit**");

WHEREAS, Green & Smith Investment Management L.L.C. ("**Green & Smith**") has been the investment manager of GS Master Trust since May 31, 2005 pursuant to a Management Agreement, dated as of May 31, 2005, as amended, by and between Green & Smith and the Trustee;

WHEREAS, the Trustee is aware that Green & Smith, on behalf of the Trust, has (i) commenced the Lawsuit or (ii) sought to be appointed lead plaintiff for a class of investors, including the Trust, in the Lawsuit; and

WHEREAS, pursuant to the powers of delegation granted to the Trustee in the Declaration of Trust dated May 31, 2005 establishing the Trust, (the "**Trust Agreement**"), the Trustee has delegated full power and authority to manage and supervise the business of the Trust to Green & Smith which powers and authority include authority for Green & Smith to commence the Lawsuit on behalf of the Trust and/or participate as lead plaintiff or otherwise in the Lawsuit;

WHEREAS, the Trustee desires to confirm that Green & Smith has had since the inception of the Trust and currently has standing and authority to commence and pursue the Lawsuit on behalf of the Trustee in respect of the Trust;

NOW THEREFORE, IT IS:

RESOLVED, that the Trustee hereby confirms the authority to Green & Smith to commence and pursue the Lawsuit on behalf of the Trust in respect of the Trust and/or participate as lead plaintiff or otherwise in the Lawsuit;

FURTHER RESOLVED, that each officer of Green & Smith is hereby authorized to take any actions he or she deems necessary or appropriate in connection with the Lawsuit; and

FURTHER RESOLVED, that all previous actions taken by the officers of Green & Smith with respect to the Lawsuit are hereby ratified and confirmed in all respects and each officer of Green & Smith is hereby authorized to take such further actions as he or she deems necessary or appropriate in connection with the Lawsuit and to effectuate the purposes of these resolutions.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned has executed this Consent as of the 11th day of June, 2008.

WINCHESTER GLOBAL TRUST COMPANY LIMITED

By: ______________________

Name: PRISCILLA MURRAY BROWN

Title: VICE-PRESIDENT

CRÉDIT AGRICOLE
STRUCTURED ASSET MANAGEMENT

To whom it may concern:

I, the Chief Operating Officer of Crédit Agricole Structured Asset Management Advisers LLC, investment manager to Institutional Benchmarks Series (Master Feeder) Limited, acting solely in respect of the Cursa Series (the "**Fund**"), hereby confirm the following on behalf of the Fund:

> Green & Smith Investment Management L.L.C. ("**Green & Smith**") has discretion and authority under an Investment Management Agreement, dated as of May 30, 2006, by and among Crédit Agricole Structured Asset Management Advisers LLC (successor to Starview Capital Management LLC), the Fund and Green & Smith (the "**Investment Management Agreement**") to pursue certain lawsuits, including class-action claims, alleging violations of securities laws with respect to securities in which the Fund has an interest ("**Lawsuits**") and/or participate as lead plaintiff or otherwise in Lawsuits for the benefit of the Fund.
>
> We are aware that Green & Smith, on behalf of the Fund, has (i) commenced Lawsuits or (ii) sought to be appointed lead plaintiff for a class of investors, including the Fund, in Lawsuits.
>
> We desire to confirm our longstanding belief that Green & Smith has standing and authority under the Investment Management Agreement to commence and pursue Lawsuits on behalf of the Fund.
>
> We hereby confirm our delegation of authority to Green & Smith to commence and pursue Lawsuits on behalf of the Fund and/or participate as lead plaintiff or otherwise in Lawsuits for the benefit of the Fund
>
> We hereby authorize each officer of Green & Smith and/or the Fund to take any actions he or she deems necessary or appropriate in connection with Lawsuits

Sincerely,

Didier Cents
Chief Operating Officer

Crédit Agricole Structured Asset Management Advisers LLC
1301 Avenue of the Americas, 38th Floor – New York, New York 10019-6022 – USA
Telephone: (212) 603-5000 – Fax: (212) 603-5001

MSS

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Fax: +44 (0) 203 159 5014
www.msscapital.com

Authorised and regulated by the Financial Services Authority
Registered in England no 04133857

PRIVATE AND CONFIDENTIAL

20 June 2008

To whom it may concern:

I, the Chief Operating Officer of MSS Capital Limited, sub-investment manager of The FTSEhx Fund SPC, acting solely in respect of MSS Merger Arbitrage 2 (the "**Fund**"), hereby confirm the following on behalf of the Fund:

> Green & Smith Investment Management L.L.C. ("**Green & Smith**") has discretion and authority under an Investment Management Agreement, dated as of April 13, 2004, by and among The FTSEhx Fund SPC, MSS Fund Management Limited, MSS Capital Limited, the Fund and Green & Smith (the "**Investment Management Agreement**") to pursue certain lawsuits, including class-action claims, alleging violations of securities laws with respect to securities in which the Fund has an interest ("**Lawsuits**") and/or participate as lead plaintiff or otherwise in Lawsuits for the benefit of the Fund.
>
> We are aware that Green & Smith, on behalf of the Fund, has (i) commenced Lawsuits or (ii) sought to be appointed lead plaintiff for a class of investors, including the Fund, in Lawsuits.
>
> We desire to confirm our longstanding belief that Green & Smith has standing and authority under the Investment Management Agreement to commence and pursue Lawsuits on behalf of the Fund.
>
> We hereby confirm our delegation of authority to Green & Smith to commence and pursue Lawsuits on behalf of the Fund and/or participate as lead plaintiff or otherwise in Lawsuits for the benefit of the Fund.
>
> We hereby authorize each officer of Green & Smith and/or the Fund to take any actions he or she deems necessary or appropriate in connection with Lawsuits.

Sincerely,

Steven Garner
Chief Operating Officer

EXHIBIT D

Summary of Analyses: First-In First-Out ("FIFO") Share Accounting
LEAP Wireless International, Inc. Common Stock
Class Period: May 16, 2004 - November 9, 2007

System:	GS Master Trust	Instit. Benchmarks Series (Master Feeder) Limited	MSS Merger Arbitrage 2	The Merger Fund	The Merger Fund VL	Total
Trading Analysis						
Shares Held @ 05/16/2004	-	-	-	-	-	-
Class Period Purchases						
Shares	32,900	12,000	1,600	377,300	1,200	425,000
Dollars	$ 2,699,877.00	$ 985,293.00	$ 131,251.00	$ 30,806,657.00	$ 99,801.00	$ 34,722,879.00
Class Period Sales						
Shares	20,550	7,400	1,000	233,450	700	263,100
Dollars	$ 1,632,519.00	$ 588,999.00	$ 80,307.00	$ 18,547,775.00	$ 54,471.00	$ 20,904,071.00
Shares Held 11/09/2007	12,350	4,600	600	143,850	500	161,900
"Lookback Period" Sales (1)						
Shares	12,350	4,600	600	143,850	500	161,900
Dollars	$ 445,737.00	$ 166,087.00	$ 21,618.00	$ 5,191,653.00	$ 17,919.00	$ 5,843,014.00
Shares Held @ 01/10/2008 (2)	-	-	-	-	-	-
Net Expenditure Analysis						
Net Class Period Purchases (Sales) (1)						
Shares	12,350	4,600	600	143,850	500	161,900
Dollars Net Expenditures (Net Proceeds)	$ 1,067,358.00	$ 396,294.00	$ 50,944.00	$ 12,258,882.00	$ 45,330.00	$ 13,818,808.00
Net Class Period + "Lookback Period" Purchases (Sales) (1)						
Shares	0	0	0	0	0	0
Dollars Net Expenditures (Net Proceeds)	$ 621,621.00	$ 230,207.00	$ 29,326.00	$ 7,067,229.00	$ 27,411.00	$ 7,975,794.00
Gain (Loss) Analysis						
Gain (Loss) on Class Period Purchases (3)	$ (621,621.00)	$ (230,207.00)	$ (29,326.00)	$ (7,067,229.00)	$ (27,411.00)	$ (7,975,794.00)
Less: Offset for Pre-Class Holdings Sold Above $38.7167	$ -	$ -	$ -	$ -	$ -	$ -
Gain (Loss) After Offset	$ (621,621.00)	$ (230,207.00)	$ (29,326.00)	$ (7,067,229.00)	$ (27,411.00)	$ (7,975,794.00)

Notes:
(1) Sales attributable to Pre-Class Period Holdings and Class Period Purchases only; Figures may not be equal under FIFO and LIFO as under LIFO, post-Class Period sales are first allocated to post-Class Period purchases, if any.
(2) Holdings attributable to Pre-Class Period Holding and Class Period Purchases only; Figures may not be equal under FIFO and LIFO as under LIFO, post-Class Period sales are first allocated to post-Class Period purchases, if any.
(3) Class Period Purchases held as of 01/10/2008 valued at $38.7167, the average closing price of LEAP Wireless International, Inc. Common Stock common stock between 11/09/2007 and 01/10/2008 (63-Day 'Lookback Period').

Summary of Analyses: Last-In First-Out ("LIFO") Share Accounting
LEAP Wireless International, Inc. Common Stock
Class Period: May 16, 2004 - November 9, 2007

System	GS Master Trust	Instit Benchmarks Series (Master Feeder) Limited	MSS Merger Arbitrage 2	The Merger Fund	The Merger Fund VL	Total
Trading Analysis						
Shares Held @ 05/16/2004	-	-	-	-	-	-
Class Period Purchases						
Shares	32,900	12,000	1,600	377,300	1,200	425,000
Dollars	$ 2,699,877.00	$ 985,293.00	$ 131,251.00	$ 30,806,657.00	$ 99,801.00	$ 34,722,879.00
Class Period Sales						
Shares	20,550	7,400	1,000	233,450	700	263,100
Dollars	$ 1,632,519.00	$ 588,999.00	$ 80,307.00	$ 18,547,775.00	$ 54,471.00	$ 20,904,071.00
Shares Held 11/09/2007	12,350	4,600	600	143,850	500	161,900
"Lookback Period" Sales (1)						
Shares	12,350	4,600	600	143,850	500	161,900
Dollars	$ 445,737.00	$ 166,087.00	$ 21,618.00	$ 5,191,653.00	$ 17,919.00	$ 5,843,014.00
Shares Held @ 01/10/2008 (2)	-	-	-	-	-	-
Net Expenditure Analysis						
Net Class Period Purchases (Sales) (1)						
Shares	12,350	4,600	600	143,850	500	161,900
Dollars Net Expenditures (Net Proceeds)	$ 1,067,358.00	$ 396,294.00	$ 50,944.00	$ 12,258,882.00	$ 45,330.00	$ 13,818,808.00
Net Class Period + "Lookback Period" Purchases (Sales) (1)						
Shares	0	0	0	0	0	0
Dollars Net Expenditures (Net Proceeds)	$ 621,621.00	$ 230,207.00	$ 29,326.00	$ 7,067,229.00	$ 27,411.00	$ 7,975,794.00
Gain (Loss) Analysis						
Gain (Loss) on Class Period Purchases (3)	$ (621,621.00)	$ (230,207.00)	$ (29,326.00)	$ (7,067,229.00)	$ (27,411.00)	$ (7,975,794.00)
Less: Offset for Pre-Class Holdings Sold Above $38.7167	$ -	$ -	$ -	$ -	$ -	$ -
Gain (Loss) After Offset	$ (621,621.00)	$ (230,207.00)	$ (29,326.00)	$ (7,067,229.00)	$ (27,411.00)	$ (7,975,794.00)

Notes:
(1) Sales attributable to Pre-Class Period Holdings and Class Period Purchases only; Figures may not be equal under FIFO and LIFO as under LIFO, post-Class Period sales are first allocated to post-Class Period purchases, if any.
(2) Holdings attributable to Pre-Class Period Holding and Class Period Purchases only; Figures may not be equal under FIFO and LIFO as under LIFO, post-Class Period sales are first allocated to post-Class Period purchases, if any.
(3) Class Period Purchases held as of 01/10/2008 valued at $38.7167, the average closing price of LEAP Wireless International, Inc. Common Stock common stock between 11/09/2007 and 01/10/2008 (63-Day 'Lookback Period').

EXHIBIT E

CERTIFICATION OF LEAD PLAINTIFF
PURSUANT TO FEDERAL SECURITIES LAWS

I, Roy Behren, as Chief Compliance Officer for Westchester Capital Management, Inc. ("Westchester Capital) and Green & Smith Investment Management L.L.C. (G&S), declare as follows:

1. Westchester Capital is the Adviser to and has full discretion and controls all investments made by The Merger Fund and The Merger Fund VL. G&S is the Adviser to and has full discretion and controls all investments made by the GS Master Trust, MSS Merger Arbitrage 2, and Institutional Benchmarks Series (Master Feeder) Limited. Each of these funds (the "Funds") invested in Leap Wireless International, Inc. (NASDAQ: LEAP) ("Leap Wireless").

2. I am the Chief Compliance Officer of Westchester Capital and G&S and am authorized to undertake all acts on their behalves, and therefore on behalf of the Funds, including the right to commence legal actions on their behalves and the right to seek to serve as lead plaintiff in an action brought pursuant to the federal securities laws.

3. I have reviewed a copy of a complaint filed in this action.

4. The Funds did not purchase the security that is the subject of this action (LEAP) at the direction of counsel or in order to participate in any private action arising under the Private Securities Litigation Reform Act.

5. Westchester Capital and G&S are willing to serve as representative parties on behalf of a class and I will testify at deposition and trial, if necessary.

6. The Funds' transactions in the security that is the subject of this litigation during the relevant period are set forth on the attached sheets.

7. Westchester Capital has served as a representative party on behalf of a class in one case during the last three years, Kaplan v. IMAX Corp. et al., Civil Action No. 06-06128 (SDNY)(NRB). Neither Westchester Capital nor G&S has sought to serve as a representative party in any other case in the last three years.

8. Westchester Capital and G&S will not accept any payment for serving as representative parties, except to receive each Fund's pro rata share of any recovery or as ordered or approved by the Court or any award by the Court of reasonable costs and expenses (including lost wages) directly relating to representation of the class.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: January 16, 2008

Signed: ______________________
Roy Behren
Chief Compliance Officer

EXHIBIT F

HULETT HARPER STEWART LLP
BLAKE MUIR HARPER, SBN: 115756
KIRK B. HULETT; SBN: 110726
550 West C Street, Suite 1600
San Diego, CA 92101
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Proposed Liaison Counsel for Movants
Westchester Capital Management, Inc and
Green & Smith Investment Management L.L.C.
[Additional Counsel on Signature Page]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HCL PARTNERS LIMITED PARTNERSHIP, On behalf of Itself and all others similarly situated, Plaintiff, -v- LEAP WIRELESS INTERNATIONAL, INC., S. DOUGLAS HUTCHESON, DEAN M. LUVISA, AMIN I. KHALIFA and PRICEWATERHOUSECOOPERS, LLP, Defendants.	Case No.: 07-cv-2245-BTM-NLS **CLASS ACTION** **DECLARATION OF ROY BEHREN IN SUPPORT OF MOTION BY CLASS MEMBERS WESTCHESTER CAPITAL MANAGEMENT, INC. AND GREEN & SMITH INVESTMENT MANAGEMENT L.L.C.** DATE: March 28, 2008 TIME: 11:00 a.m. JUDGE: Hon. Barry Ted Moskowitz CTRM: 15 (5th Floor)
FRANK CHAREK, Individually and on behalf of all others similarly situated, Plaintiff, -v- LEAP WIRELESS INTERNATIONAL, INC., S. DOUGLAS HUTCHESON, MARK H. RACHESKY, AMIN I. KHALIFA, GLENN UMETSU, and DEAN M. LUVISA, Defendants.	Case No.: 07-cv-2256-BTM-NLS

[Caption continued on next page]

DEVAY CAMPBELL, Individually and on behalf of all others similarly situated, Plaintiff, -v- LEAP WIRELESS INTERNATIONAL, INC., S. DOUGLAS HUTCHESON, MARK H. RACHESKY, AMIN I. KHALIFA, GLENN UMETSU, and DEAN M. LUVISA, Defendants.	Case No.: 07-cv-2297-BTM-NLS

1. I, Roy Behren, am Chief Compliance Officer for both Westchester Capital Management Inc. and Green & Smith Investment Management L.L.C. (the "Westchester Movants"). I make this declaration in further support of the motion to appoint the Westchester Movants as attorney-in-fact to take all actions on behalf of The Merger Fund, The Merger Fund VL, the GS Master Trust, MSS Merger Arbitrage 2 and Institutional Benchmarks Series (Master Feeder) Limited, as the Lead Plaintiff in the above captioned actions.

2. As stated in my previous Certification, Westchester Capital is the Adviser to, and has full and complete discretion over and controls all investments made by The Merger Fund and The Merger Fund VL. Green & Smith is the Adviser to, and has full and compete discretion over and controls all investments made by the GS Master Trust, MSS Merger Arbitrage 2 and Institutional Benchmarks Series (Master Feeder) Limited. Both Advisers have unrestricted decision-making authority with respect to the funds that they advise and manage.

3. I am the Chief Compliance Officer of Westchester Capital and Green & Smith and am authorized to undertake all acts on their behalves, including the right to commence legal action and the right to seek to serve as lead plaintiff in this and any other action arising under the Private Securities Litigation Reform Act.

4. It is my understanding that if an investment adviser has full discretion and control, as the Westchester Movants do on behalf of these funds, and is the attorney-in-fact authorized to undertake all acts, as the Westchester Movants are on behalf of these funds, then that investment Adviser has standing to commence legal action on its own behalf, including seeking to be appointed as the lead plaintiff in this action.

5. As a result of the investment made in Leap common stock by the Westchester Movants, the funds have the largest financial stake of any class member seeking appointment as

lead plaintiff in the above captioned actions and therefore the Westchester Movants as attorneys-in-fact for these funds believe they should be appointed as lead plaintiff in this action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: March 19, 2008

Roy Behren